

File No. 190051

Committee Item No. 2

Board Item No. 25

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: February 7, 2019

Board of Supervisors Meeting:

Date: February 26, 2019

#### Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

#### OTHER

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| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>DHR Presentation - February 7, 2019</u> |
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Prepared by: John Carroll

Date: February 1, 2019

Prepared by: John Carroll

Date: February 11, 2019

1 [Labor-Management Agreement - San Francisco Firefighters' Association, Local 798 -  
2 Workers' Compensation Alternative Dispute Resolution Program]

3 **Resolution authorizing the Department of Human Resources to enter a Workers'**  
4 **Compensation Alternative Dispute Resolution Labor-Management Agreement with the**  
5 **San Francisco Firefighters' Association, Local 798, with an initial term of three years to**  
6 **commence following approval by the Board of Supervisors, and continuing year to year**  
7 **thereafter, in one-year terms.**

8  
9 WHEREAS, California Labor Code, Section 3201.7, authorizes an employer and a  
10 union certified as the exclusive bargaining representative for affected employees to enter into  
11 a labor-management agreement, separate and apart from the applicable memorandum of  
12 understanding, to establish alternative dispute resolution procedures to those required by  
13 state workers' compensation laws; and

14 WHEREAS, The City and County of San Francisco ("City") and the San Francisco  
15 Firefighters' Association, Local 798 ("Local 798"), wish to enter a Workers' Compensation  
16 Alternative Dispute Resolution Labor-Management Agreement ("Agreement") to maintain  
17 good labor-management relations between the City and Local 798, and to provide an  
18 alternative dispute resolution program ("ADR Program") for claims by current and former  
19 (including retired) Local 798-represented City employees who have experienced or may  
20 experience an industrial illness or injury; and

21 WHEREAS, The goals of the ADR Program are to provide for: (1) timely and efficient  
22 determinations on employees' workers' compensation claims; (2) timely and efficient access  
23 to high-quality medical care for industrially ill or injured employees; (3) the return of  
24 employees to work in a timely fashion; and (4) timely, efficient, and fair resolution of all  
25 disputes that arise in connection with employees' workers' compensation claims; and

1           WHEREAS, The Agreement is not intended to expand or diminish statutory  
2 entitlements, rights, or obligations of employees or the City, or to expand or diminish any  
3 entitlements, rights, or obligations under local law or the Memoranda of Understanding  
4 between the City and Local 798; and

5           WHEREAS, The Controller will evaluate and report on the ADR Program's estimated  
6 costs and savings at the conclusion of each full fiscal year the Agreement is in effect; and

7           WHEREAS, The City will allocate an amount equal to 50% of the ADR Program  
8 estimated net savings, as stated in the Controller's report, for the benefit of active employees  
9 represented by Local 798; and

10          WHEREAS, A copy of the Agreement is on file with the Clerk of the Board of  
11 Supervisors in File No. 190051; now, therefore, be it

12          RESOLVED, That the Board of Supervisors authorizes the Department of Human  
13 Resource to execute the Workers' Compensation Alternative Dispute Resolution Labor-  
14 Management Agreement with the San Francisco Firefighters' Association Local 798, with an  
15 initial term of three years to commence following approval by the Board of Supervisors, and  
16 continuing year to year thereafter.

# Workers Compensation ADR / "Carve-Out" Agreement

Department of Human Resources

Government Audit & Oversight Committee  
February 7, 2019





## Overview

- Resolution authorizing the Department of Human Resources (DHR) to enter into a Workers' Compensation Alternative Dispute Resolution Labor-Management Agreement with Police and Fire Unions.
- Designed as alternate to the normal state-administered process overseen by the State Division of Workers' Compensation.
- The "Carve Out" will allow the City to develop, in partnership with Labor, alternative dispute resolution processes for Workers' Compensation claims in order to **resolve disputes more rapidly, reduce litigation, and help employees get back to work sooner.**
- Initial term of three years to commence following approval by the Board of Supervisors, and continuing year to year thereafter in one year terms.

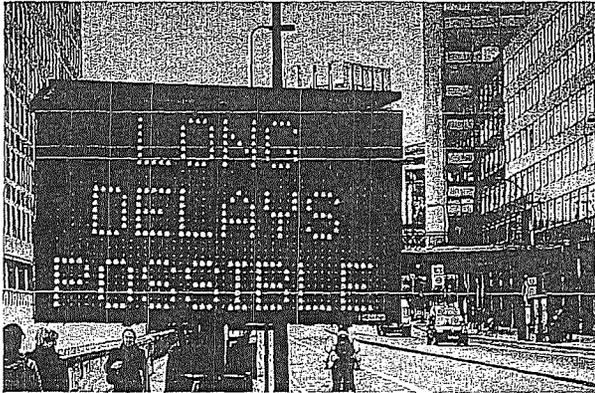


## Brief Background

- In December 2018, the SF Police Officers Association (POA) and SF Fire Fighters Local 798 each agreed to the terms of an ADR program to resolve workers' compensation injury claims filed by current and former employees represented by the two unions.
- If approved, DHR will implement the program on 7/1/19.
- Pilot program using sworn union members with similar job activities throughout membership.

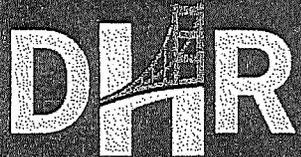


## The Current Scenario

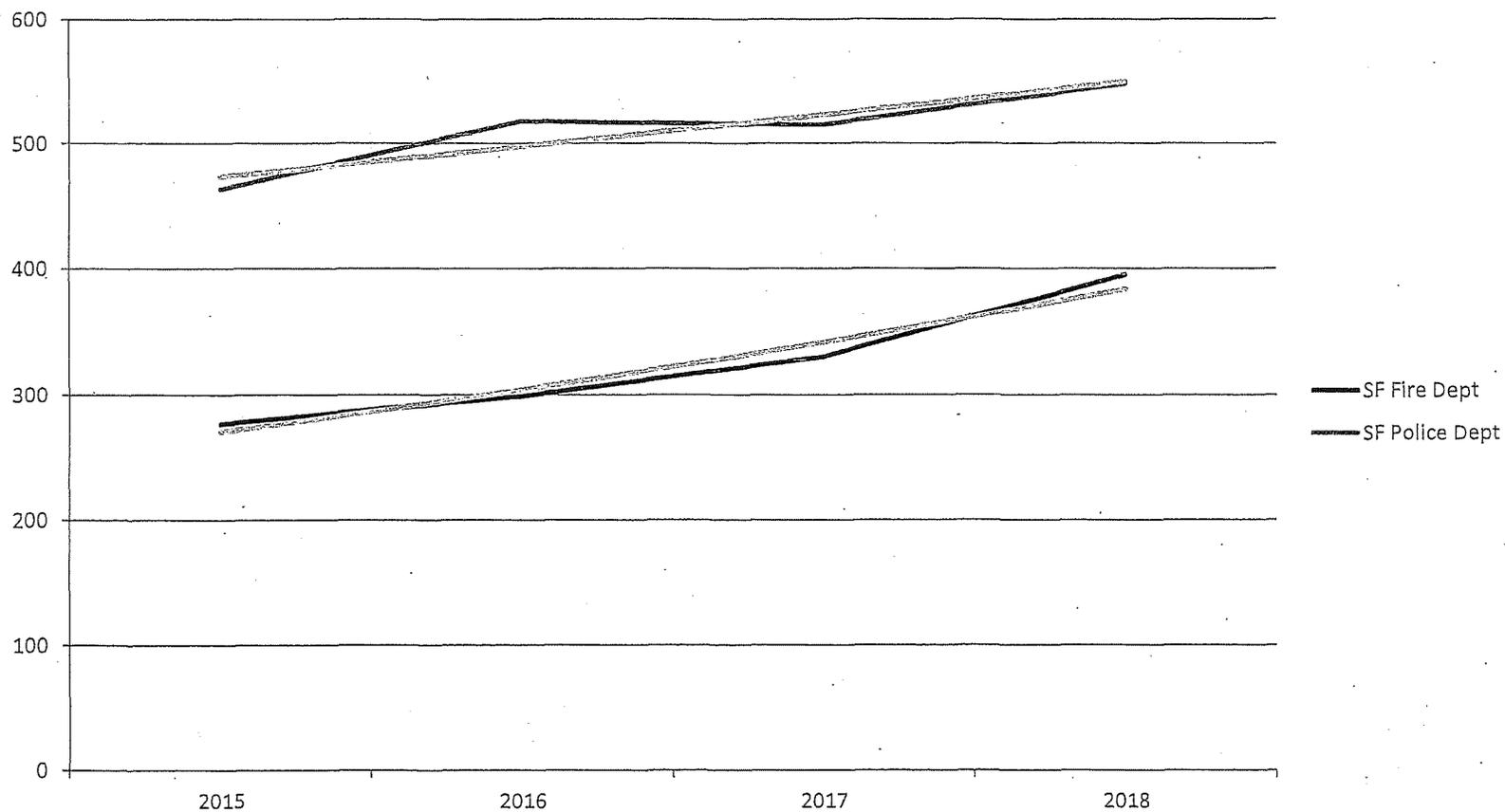


- *The Carve-Out is a direct attempt to mitigate the challenges with the current system.*

- State administrated process often has lengthy delays in dispute resolution for medical evaluations.
- As a result of the delays, disputes remain unresolved and injured employees remain off work longer.
- Fewer staff available to work leads to increased shifts/workload on remaining employees.
- Industry data and experience show the longer a claim is open, the more expensive it becomes.
- WC costs for Police and Fire are increasing.



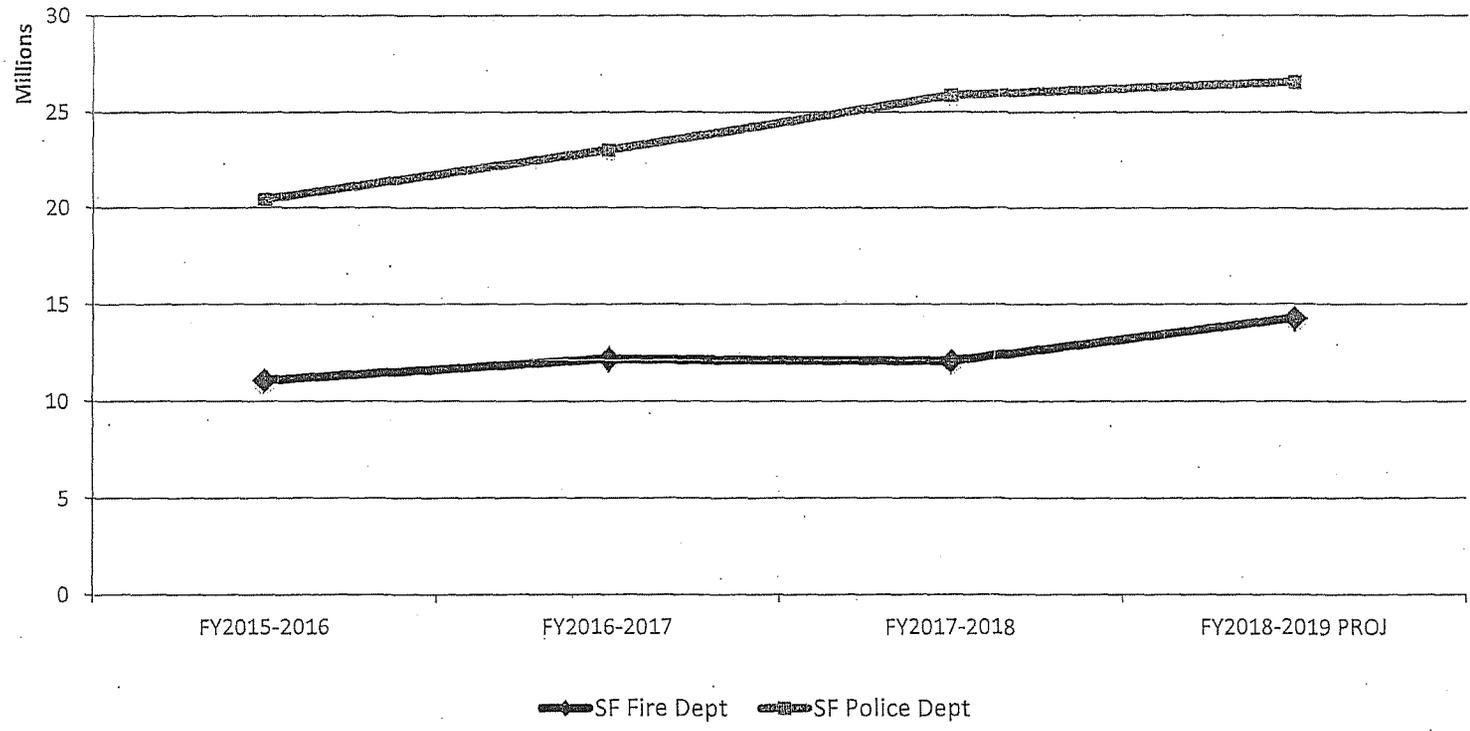
# Police and Fire Injury Trends



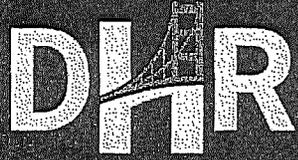


# Cost Trends- Last Three Years

## Workers' Compensation Benefit Payments



1105



## Benefits and Key Goals

- Reduced Litigation
- Faster and more timely determinations on covered workers compensation claims
- Improved Labor-Management Relations
- Potential cost savings
- Faster Return to work, in light of disputes resolved more expeditiously
  
- Neither benefits nor rights may be diminished for either party
- Both employer and employee remain entitled to legal representation at all phases

# Thank You

Kate Howard, Managing Deputy Director,  
Department of Human Resources

Julian Robinson, WC Claims Manager  
Department of Human Resources





London N. Breed  
Mayor

Micki Callahan  
Human Resources Director

**WORKERS' COMPENSATION ALTERNATIVE DISPUTE RESOLUTION  
LABOR-MANAGEMENT AGREEMENT**

*Tommy's Agreement*

Between

**San Francisco Firefighters' Association Local 798**

And

**The City and County of San Francisco**

**Article 1: Introduction and Purpose**

- 1.1 This Worker's Compensation Alternative Dispute Resolution Agreement ("Agreement") is made and entered into this **17th day of December, 2018** ("Effective Date"), by and between the City and County of San Francisco ("City") and the San Francisco Firefighters' Association Local 798 ("Local 798"). The Agreement is made in accordance with the provisions of Labor Code section 3201.7, and is restricted to establishing the terms and conditions necessary to implement that section. Section 3201.7 authorizes an employer and a union that is recognized or certified as the exclusive bargaining representative for affected employees to enter into a labor-management agreement, separate and apart from the applicable collective bargaining agreement, to establish alternative dispute resolution procedures to those required by state workers' compensation laws ("State System"). The Agreement is intended to improve labor-management relations between the City and Local 798, and to provide an alternative dispute resolution process for claims by current and former (including retired) Local 798-represented City employees in both bargaining units who have experienced or may experience an industrial illness or injury ("Covered Employees").
- 1.2 Except as specifically provided herein, this Agreement is not intended to expand or diminish statutory entitlements, rights, and obligations of Covered Employees or the City. As required by Labor Code Section 3201.7(b)(1), nothing in this Agreement diminishes the rights of individual employees to compensation payments for total or partial disability, supplemental job displacement benefits, medical treatment fully paid by the City and any other benefits provided by the State System. Except as specifically provided herein, this Agreement is not intended to expand or diminish any entitlements, rights, or obligations under local law or the Memoranda of Understanding between the City and Local 798.
- 1.3 The goals of this Alternative Dispute Resolution Program (hereinafter referred to as the "ADR Program") are to provide for:
  - 1.3.1 Timely and efficient determinations on Covered Employees' workers' compensation claims;
  - 1.3.2 Timely and efficient access to high-quality medical care for industrially ill or injured Covered Employees;

*PS  
for*

- 1.3.3 The return of Covered Employees to work in a timely fashion; and
- 1.3.4 Timely, efficient, and fair resolution of all disputes that arise in connection with workers' compensation claims of Covered Employees.
- 1.4 The ADR Program shall be established and implemented only after: (a) the parties have obtained authorization of the Administrative Director as required by Labor Code Section 3207.1(a)(3); (b) the City has complied with the requirements of Labor Code Section 3201.7(e); (c) Local 798 has complied with Section 3201.7(f); and (d) the Board of Supervisors has approved the Agreement (the "Implementation Date"). The Implementation Date may be on or after the Effective Date. The City shall provide written notice to Local 798 when the requirements in this Section 1.4 are met, and shall specify the Implementation Date in that notice.

**Article 2: Scope**

- 2.1 This Agreement shall apply to all workers' compensation claims filed by Covered Employees on or after the Implementation Date; provided, however, any issues regarding interpretation or application of the City Charter are excluded from this ADR Program, other than periods of disability. Neither a mediator, arbitrator nor the WCAB shall have jurisdiction to consider, interpret, or determine any Charter provision on claims under this ADR Program, other than period of disability. The ADR Program under this Agreement shall apply to all such claims. A Covered Employee who has applied for benefits under this Agreement is an "Applicant."
- 2.2 Covered Employees who have workers' compensation claims filed prior to the Implementation Date may request to "opt in" to this Agreement with respect to those claims by submitting a written request to the Ombudsperson (see section 3.3 regarding role of the Ombudsperson). The Ombudsperson shall make a recommendation to the Joint Labor-Management Committee regarding whether to accept the claim into the ADR Program (see section 3.1 regarding the role of the Joint Labor-Management Committee). The Joint Labor-Management Committee shall evaluate these claims on an individual basis to determine whether to include them in the ADR Program. A Covered Employee whose request to opt into the ADR Program has been approved shall also be an Applicant for purposes of this Agreement.
  - 2.2.1 When considering a Covered Employee's request to "opt in" to this Agreement, the Ombudsperson and the Joint Labor-Management Committee shall consider the following factors:
    - 2.2.1.1 The age of the claim;
    - 2.2.1.2 Whether the Covered Employee has other current open claims, and whether allowing the Covered Employee to "opt in" will help resolve all outstanding claims for the Covered Employee; and
    - 2.2.1.3 Whether allowing the Covered Employee to "opt in" will likely result in more efficient and expeditious resolution of the Covered Employee's claim(s).
  - 2.2.2 Covered Employees who are accepted for opt-in may not re-litigate prior findings or determinations, nor shall they be entitled to obtain a new or different medical-legal evaluator if one has already been assigned and has issued a comprehensive medical-legal report. Case resolution efforts under this Agreement shall be for the purpose of moving the case forward to resolution.

- 2.3 This Agreement shall apply to all workers' compensation claims, causes of action and affirmative defenses, including Serious and Willful claims under Labor Code sections 4551 *et seq.*, as permitted under California Labor Code section 5275(b), involving Applicants.
- 2.4 Nothing in this Agreement shall diminish the rights of either party to be represented by counsel.
- 2.5 Both Applicants and the City shall retain all discovery rights imparted by the California Labor Code, California Code of Regulations, and where applicable, the California Code of Civil Procedure.
- 2.6 This Agreement shall remain in effect for three (3) years from the Implementation Date and continue year to year thereafter in one year terms. Either party may terminate the Agreement by providing at least ninety (90) days written notice to the other party before the end of the term.
- 2.7 The parties acknowledge that this Agreement requires approval by the San Francisco Board of Supervisors.
- 2.8 The parties acknowledge that this Agreement constitutes the sole agreement in this matter, that it supersedes any prior oral or written agreements, and that it may be modified only in writing signed by all parties to this Agreement, approved by the Board of Supervisors, and approved by the Administrative Director as required by Labor Code Section 3201.7(e).

**Article 3: Program Oversight**

- 3.1 There shall be a Joint Labor-Management Committee ("Joint Committee") consisting of seven total members: three members representing the City, three members representing Local 798, and an ADR Program Director/Mediator (hereinafter the "ADR Program Director").
  - 3.1.1 The City shall provide reasonable release time for the Local 798 members participating as representatives on the Joint Committee consistent with the Memorandum of Understanding between the City and Local 798.
  - 3.1.2 The City and Local 798 shall each identify one of their Joint Committee representatives to serve as co-chair of the Joint Committee. The co-chairs shall have the same responsibility and authority as the other members, and shall alternate responsibility to chair the meetings, with the Local 798 co-chair chairing the initial meeting, the City co-chair chairing the next meeting, and then continuing to alternate responsibility to chair the meetings.
  - 3.1.3 The Joint Committee shall strive for open communication on workers' compensation issues and concerns, and shall seek to find agreement on any operational issues necessary to ensure the success of the ADR Program.
  - 3.1.4 The Joint Committee may meet with another joint labor-management committee established under an equivalent ADR program, by mutual agreement of both committees.
  - 3.1.5 The Joint Committee shall:
    - 3.1.5.1 Meet monthly for the first six months after the Effective Date and then no less than quarterly to review the operation of the ADR Program and make recommendations to the City Human Resources Director or designee and Local 798 on any changes to the terms, conditions and processes established in this Agreement;
    - 3.1.5.2 Seek to ensure that the operational procedures of the ADR Program are designed to serve the general purpose of this Agreement and the ADR Program;
    - 3.1.5.3 Have no authority to direct the course or interfere in the administration of a particular claim;

- 3.1.5.4 Approve the City's nominee for ADR Program Director or submit additional names for consideration. Either party may ask to replace the ADR Program Director. In that circumstance, if requested by the Joint Committee, the City shall nominate a replacement ADR Program Director for action by the Joint Committee under this subsection 3.1.5.4. The City shall engage the services of the selected ADR Program Director;
- 3.1.5.5 Approve the City's nominee for Ombudsperson or submit additional names for consideration. Either party may ask to replace the Ombudsperson. In that circumstance, if requested by the Joint Committee, the City shall nominate a replacement Ombudsperson for action by the Joint Committee under this subsection 3.1.5.5. The City shall engage the services of the selected Ombudsperson;
- 3.1.5.6 Prior to the Implementation Date, develop and agree on an initial list of physicians to serve as Independent Medical Evaluators in appropriate specialties ("IMEs") to address all relevant medical issues as specified in this Agreement. The City shall maintain the list, and update it as provided in this Agreement. Selected physicians may limit their services to resolving only medical treatment disputes, only medical-legal disputes, or both medical treatment and medical-legal disputes, and the list shall indicate the scope of services and any areas of specialty for each physician.

The City, Local 798, and the Ombudsperson may recommend adding or removing physicians from the list. The City will add or remove a physician from the list only with the Joint Committee's approval. Any changes to the physician list shall only apply on a prospective basis, and any newly selected physician shall not revisit prior medical findings; and

- 3.1.5.7 Prior to the Implementation Date, develop and agree on a list of mediators and arbitrators experienced in workers' compensation matters (collectively, the "ADR Professionals") to provide dispute resolution services consistent with this Agreement. The City shall maintain the list, and update it as provided in this Agreement.

The City, Local 798, and the Ombudsperson may recommend adding or removing ADR Professionals from the list. The City will add or remove an ADR Professional from the list only with the Joint Committee's approval. Any changes to the ADR Professional list shall only apply on a prospective basis, and any newly selected ADR Professional shall not revisit prior findings.

- 3.1.5.8 Prior to the Implementation Date, develop and agree on a list of permanent disability raters (collectively, the "Raters") to providing rating services under this Agreement. The City shall maintain the list, and update it as provided in this Agreement.

The City, Local 798, and the Ombudsperson may recommend adding or removing Rater from the list. The City will add or remove a Rater from the list only with the

Joint Committee's approval. Any changes to the Rater list shall only apply on a prospective basis, and any newly selected Raters shall not revisit prior findings.

3.1.5.9. Determine the specific expenditures of the funds specified in section 10.2, for the benefit of active employees covered by this Agreement.

3.2 The City shall nominate an ADR Program Director for approval by the Joint Committee. The ADR Program Director will oversee claim operations that are subject to this Agreement on an ongoing basis, including oversight of an Ombudsperson and other ADR Professionals working in conjunction with this Agreement. The ADR Program Director shall:

3.2.1 Supervise the Ombudsperson and the ADR Professionals to maximize their effectiveness in fulfilling their obligations under this Agreement while ensuring their independence and credibility;

3.2.2 Have the same powers to issue subpoenas as a workers' compensation administrative law judge. The ADR Program Director may delegate this power to arbitrators hearing matters pursuant to this Agreement;

3.2.3 Make recommendations to the Joint Committee on ADR Program improvements;

3.2.4 Provide training to the Department of Human Resources ("DHR") Workers' Compensation claims staff assigned to the ADR Program at implementation, and periodically thereafter, as needed and requested by DHR to ensure understanding of the ADR Program goals and processes; and

3.2.5 Conduct mediations for matters referred to mediation by the Ombudsperson, and submit a written report to the assigned claims adjuster outlining the issues in dispute and the disposition of the mediation session. Should the ADR Program Director be unable to provide mediation services within a reasonable time, he/she shall direct the Ombudsperson to arrange the mediation with one of the mediators on the list established under Section 3.1.5.7.

3.3 There shall be an Ombudsperson who shall provide aid and counsel for all Applicants. The Ombudsperson shall be an individual with significant expertise and experience in the field of California workers' compensation. The City will notify the Ombudsperson of all claims subject to this Agreement and will provide all records to the Ombudsperson electronically via secure email. The City will continue to provide all records to the Ombudsperson via secure email through the resolution of the claim or the end of the ADR Program. Communications between the Ombudsperson and the Applicant, or the Ombudsperson and the City, are inadmissible in any proceeding (Evidence Code section 1115, et seq.). The duties of the Ombudsperson include:

3.3.1 Making a good faith effort to contact an Applicant in a timely manner, typically within one (1) business day and in no event later than two (2) business days of notification pursuant to Section 5.1.4 of this Agreement;

3.3.2 Receiving all documents filed with the ADR Program and assigning case numbers to each claim filed, as well as keeping an electronic claims file containing all documents related to the claim.

3.3.3 Exercising independent discretion in fulfilling the responsibilities required under this Agreement on a case-by-case basis, and maintaining the confidentiality of communications from the Applicant or City; however, with approval from the Applicant or City, respectively, the Ombudsperson may disclose information or communications in order to further the Ombudsperson's duties and responsibilities under this Agreement;

- 3.3.4 Seeking to resolve workers' compensation disputes between the Applicant and the City;
  - 3.3.5 Negotiating settlements between the Applicant and the City where appropriate, considering the interests of the City and the Applicant in doing so;
  - 3.3.6 Providing information to the DHR Workers' Compensation Director in the Ombudsperson's judgement and discretion for the purposes of enhancing communication consistent with this Agreement and resolving individual claims;
  - 3.3.7 Making recommendations to the Joint Committee to ensure that the ADR Program functions consistent with the terms of this Agreement;
  - 3.3.8 Being proactive and seeking to identify potential disputes, where possible, to ensure that all Applicants receive the compensation to which they are legally entitled; and
  - 3.3.9 The Ombudsperson is not responsible for timely completing or filing ADR forms or other documents for the Applicant. However, the Ombudsperson may assist the Applicant in completing such forms, but the Applicant remains responsible for timely filing any such forms.
  - 3.3.10 Neither party may call the Ombudsperson to testify for either the Applicant or the City in any civil or administrative proceeding pertaining to the claims of the injured member.
- 3.4 The DHR Workers' Compensation Director, or designee, (hereinafter the "WC Director") shall:
- 3.4.1 Be a member of the Joint Committee, representing the City;
  - 3.4.2 Work cooperatively with the Joint Committee, ADR Program Director, and Ombudsperson to ensure that the Workers' Compensation Division staff assigned to the ADR Program respond appropriately and in a timely manner to Applicants and the Ombudsperson, and are sufficiently trained on the procedures outlined in the Agreement;
  - 3.4.3 Provide information and statistical reports on the ADR Program to the Joint Committee, including the number of claims filed, costs, and any summary information that is reasonably available to inform the Joint Committee of the results of the Agreement;
  - 3.4.4 Identify any issues of concern not covered in the Agreement that require additional attention; and
  - 3.4.5 Report required statistical data to the California Department of Industrial Relations, Division of Workers' Compensation as required by Labor Code section 3201.7(h) and ensure compliance with other provisions of Labor Code 3201.7.
- 3.5 The Ombudsperson, mediators and arbitrators retained to provide services under this Agreement shall exercise independent discretion in fulfilling their responsibilities on a case-by-case basis to maximize their effectiveness, their independence and credibility with all parties.

**Article 4: Dispute Resolution Process**

- 4.1 All disputes listed in Section 2.3 shall first be submitted to the Ombudsperson for attempted resolution. Disputes that remain unresolved through the services of the Ombudsperson shall be referred to mediation. The ADR Program Director shall serve as the mediator; but if the ADR Program Director is unable to provide mediation services within a reasonable time, then the ADR Program Director shall direct the Ombudsperson to arrange the mediation with one of the mediators on the list established under Section 3.1.5.7 (refer to section 3.2.5). Except as provided herein, disputes that remain unresolved through mediation shall be brought before an arbitrator selected by the ADR Program Director from the list of arbitrators (refer to section 3.1.5.7). Disputes regarding

Medical Treatment that remain after mediation shall not go to arbitration but shall be resolved through the procedures in Article 6 of this Agreement. The process described in this Article 4 is the "Dispute Resolution Process."

- 4.2 Arbitrators shall issue decisions within 30 days after the hearing record closes, unless the arbitrator requests an extension from the ADR Program Director and shows good cause for said request, and the ADR Program Director grants the request.
- 4.3 Either party may appeal an arbitrator's decision under this section to the Workers' Compensation Appeals Board ("WCAB") in the same manner as a Petition for Reconsideration to the WCAB.
- 4.4 All arbitration hearings shall be recorded by a certified court reporter and such record, including documentary evidence, shall be retained by the City in the electronic claims record.
- 4.5 The City and Applicants both retain the right to file a Petition for Internal Removal ("PIR") should an arbitrator's order, decision, or action result in significant prejudice or irreparable harm, and where reconsideration by the WCAB will not be an adequate remedy. The process is:
  - 4.5.1 The party filing the PIR must file that Petition with the ADR Program Director within twenty (20) calendar days after the services of the order or decision, or the occurrence of the action in issue, with copies to the parties to the case and the assigned arbitrator. The adverse party may file an answer within ten (10) calendar days after service.
  - 4.5.2 The ADR Program Director shall consult with the assigned arbitrator in an effort to informally resolve the issue raised in the PIR.
  - 4.5.3 Within fifteen (15) calendar days of the filing of the PIR, or within ten (10) calendar days of any answer filed by the adverse party, whichever is later, the assigned arbitrator shall do one of the following:
    - 4.5.3.1 Rescind the order or decision in issue, or take action to resolve the issue raised in the PIR. The issuance of a new order or decision, or the occurrence of a new action, will recommence the time for filing a PIR, as described above. If the arbitrator so acts, or if the petitioner withdraws the PIR at any time, the PIR will be deemed automatically dismissed, requiring no further action by the ADR Program Director; or
    - 4.5.3.2 Prepare and send a written recommendation that is responsive to the PIR and the adverse party's answer, if any, to the ADR Program Director, which may include affirming the arbitrator's decision.
  - 4.5.4 The ADR Program Director shall grant or deny the PIR within ten (10) calendar days of the written recommendation from the arbitrator under section 4.5.3.2. Parties aggrieved by the ADR Program Director's decision may only then file a Petition for Removal with the WCAB.

**Article 5: Claims Process, Notifications, and Discovery**

**5.1 Claim Filing Process**

- 5.1.1 The timely filing of a DWC 1 Claim form with the City shall satisfy the statute of limitations to the same extent that it would do so under the State System and shall commence proceedings for all purposes for all claims within the jurisdiction of the ADR Program. Any additional filings shall also be made with the City and the Ombudsperson.

- 5.1.2 Upon receipt of a timely denial of a claim of injury, Applicants shall have one (1) year from the date of injury to commence proceedings for the collection of workers' compensation benefits, or the claim is time barred, consistent with Labor Code section 5405.
- 5.1.3 The City will send benefit notices to Applicants as required by the Labor Code and applicable regulations under 8 CCR 9810 *et seq.*, modified in plain language to explain the applicable benefits and the dispute resolution process outlined under this Agreement. The WC Director, or designee, shall draft these notices and will seek input from the Joint Committee to ensure clarity.
- 5.1.4 The City shall make reasonable efforts to notify the Ombudsperson within one (1) working day of receipt of the DWC-1 Claim form by DHR Workers' Compensation Division and will provide to the Ombudsperson the Applicant's name and contact information provided by the Applicant or on Applicant's behalf in connection with the claim.
- 5.1.5 Claims decisions on compensability will conform to the timeframes and legal/medical bases for acceptance, delay, or denial as outlined in applicable state law except where specifically modified in this Agreement.
- 5.1.6 If the City provides a timely "delay" notice to the Applicant in order to investigate whether the claim is a compensable injury and an IME has been selected, the dispute resolution process will continue until the dispute is resolved. If the compensability of the injury claim is not resolved within 90 days from the date of the filing of the DWC-1 claim form, the City will issue a denial and the claim will not be "presumed compensable."
- 5.2 The City will notify attorneys who represent Applicants subject to this Agreement of the existence of the Agreement and ADR program, that this ADR Program is the sole means of dispute resolution, and that no dispute shall proceed to the WCAB on reconsideration until the parties have completed the alternative dispute resolution processes as established in the Agreement.
- 5.3 The City will request dismissal of all applications by Covered Employees for adjudication of claim filed with the State Division of Workers' Compensation with an alleged date(s) of injury occurring on or after the Implementation Date.
- 5.4 The City will seek dismissal for all applications for adjudication filed by or on behalf of Covered Employees filed prior to the Implementation Date where the Covered Employee requested to opt into the ADR Program and the Joint Committee accepted that request (see Section 2.2). This dismissal will allow the City to remove these claims to the jurisdiction of this ADR Program.
- 5.5 The City may request the Ombudsperson to assist with the dismissal of a claim under sections 5.3 and 5.4 above.
- 5.6 An assigned mediator, arbitrator or the ADR Director must approve all settlements by determining their adequacy based upon the evidentiary record and standards consistent with the State System.
- 5.7 The ADR Director or Ombudsperson shall have the authority to appoint permanent disability raters from a list compiled by the Joint Committee, as necessary. Either party may call and cross-examine the assigned disability rater in arbitration or other proceedings on the claim.

**Article 6: Medical Treatment**

6.1 Medical treatment for Applicants will continue to be provided within the CCSF Medical Provider Network (“CCSF MPN”) consistent with the requirements in Labor Code section 4616 *et seq.*, except where a valid pre-designation of personal physician exists.

6.1.1 In addition to the physicians currently participating in the CCSF MPN, the Joint Committee may establish a separate list of additional authorized medical treatment providers available to Applicants, solely for use under this Agreement. The City and Local 798 may submit for the Joint Committee’s consideration physicians for that separate list. The City shall maintain the list, and update it as provided in this Agreement. Physicians may be added to or removed from the separate list of authorized medical treatment providers at any time by a determination of a majority of the Joint Committee when all members are in attendance. This separate list shall have no effect on the established CCSF MPN. This Section 6.1.1 provides no authority to alter the CCSF MPN in any way.

6.2 The City will continue to adhere to the CCSF Utilization Review Plan to ensure that medical treatment is medically necessary in accordance with the adopted State Medical Treatment Guidelines. The CCSF Utilization Review Plan includes “fast-tracked” preauthorized services for commonly required treatments for 180 calendar days from the date of injury at the following occupational health clinics:

- Kaiser Occupational Health Clinics (all)
- California Pacific Medical Center, San Francisco (Sutter Health)
- St. Francis Occupational Health Clinic (Dignity Health)
- St. Mary’s Medical Center, San Francisco Airport

6.3 Objections by the Applicant to the denial or modification of medical treatment that cannot be resolved between the Applicant, the adjuster, and the Ombudsperson will be addressed by an IME. The Applicant shall select the IME from the exclusive list of IMEs in an appropriate specialty, but may consult with the Ombudsperson on the selection. If the City believes the selected IME is not in an appropriate specialty, the City will raise the issue with the Ombudsperson. The ADR Director will resolve disputes on whether the selected IME is in the appropriate specialty. The IME will prepare a medical treatment plan of action in consultation with the Applicant’s treating physician or specialist. The Applicant shall have the right to an examination by the IME.

6.4. Unresolved disputes over the recommended treatment plan or the selection of the appropriate specialty for the IME will be resolved through mediation. The ADR Program Director will serve as the mediator, or if the ADR Program Director is unable to provide mediation services within a reasonable time, then the Ombudsperson will select a mediator from the list of mediators approved by the Joint Committee.

6.4.1 Either the Ombudsperson, the City or the Applicant may request formal mediation if efforts to informally resolve the issue exceed five (5) calendar days from the date of determining the specialty for the IME or the issuance of the recommended treatment plan from the IME. The mediation will proceed as quickly as possible.

**Article 7: Medical-Legal Dispute Resolution**

- 7.1 Medical-Legal disputes may include, but are not limited to, whether the injury arises out of or occurs in the course and scope of employment, whether the Applicant is temporarily totally or temporarily partially disabled, the date applicant achieves Maximum Medical Improvement status, the extent and percentage of permanent disability, issues relating to apportionment, whether the Applicant is a Qualified Injured Worker, and/or appropriate permanent work restrictions following an injury.
- 7.2 If a comprehensive medical evaluation is required to resolve any medical-legal dispute arising from a claimed injury, either party may initiate the medical-legal dispute resolution process. The dispute will be resolved by an IME. The Applicant shall select the IME from the exclusive list of IMEs in an appropriate specialty, but may consult with the Ombudsperson on the selection. If the City believes the selected IME chosen by the Applicant is not in an appropriate specialty, the City will raise the issue with the Ombudsperson. The ADR Director will resolve disputes on whether the selected IME is in the appropriate specialty. If the Applicant does not select an IME within 30 days of a party initiating the process, the City may select the IME. Cover letters to IMEs may be submitted by both parties. If the Applicant is unrepresented, the Ombudsperson will draft and submit a cover letter on the Applicant's behalf. The Ombudsperson shall comply with Labor Code section 4062.3.
- 7.3 Disagreements over the appropriateness of the medical specialty for medical-legal dispute resolution will be resolved in the same manner as outlined in section 6.3 of this Agreement.
- 7.3.1 Either the Ombudsperson, the City or the Applicant may request formal mediation if efforts to informally resolve the issue exceed five (5) calendar days from the date of the initial determination of the appropriate medical specialty. The mediation will proceed as quickly as possible.
- 7.4 Claims where there is no compensability determination by the City within 90 days from the date of filing of the DWC 1 Claim form are presumed compensable consistent with the State System.
- 7.5 Objections by either party to any finding by an IME must be made within twenty-one (21) calendar days from the date the IME report was sent. The ADR Program Director may extend the 21-day period on the written request of a party, based on a showing of good cause. The Ombudsperson will try to resolve the objections. Attempts to resolve the objections may include recommending that additional information be provided to the IME, whether a supplemental report is necessary to address the objection, and/or whether the objection would most efficiently be handled by a mediator. This objection process does not foreclose either party from submitting a treating physician's report to the IME, requesting a supplemental report, conducting further discovery, or deposing the IME.
- 7.6 Arbitrators shall have the same authority over medical-legal disputes that a Workers' Compensation Judge of the California Division of Workers' Compensation would have over the same disputes.
- 7.7 Decisions of an arbitrator under this section may be appealed to the WCAB in the same manner as a Request for Reconsideration.

**Article 8: Return-To-Work**

- 8.1 The parties share the goal of the safe return of Applicants to work in the Fire Department that minimizes Applicants' time away from work whenever possible.
- 8.2 When appropriate and available the Fire Department shall offer modified duty consistent with the Modified Duty Section of the Memorandum of Understanding between the City and Local 798.
- 8.3 At any time, an Applicant may elect voluntarily to apply for an Industrial Disability Retirement.

**Article 9: Liens**

- 9.1 For claims subject to the ADR Program, the following lien claimants are eligible to participate under this Article 9 lien process: (a) the California Department of Employment Development, and (b) medical providers (collectively, "Eligible Lien Claimants").
- 9.2 In the event of a lien dispute, an Eligible Lien Claimant eligible to file a lien claim in the State System may file a lien claim in the ADR Program in lieu of filing with the State System.
- 9.3 An Eligible Lien Claimant electing to file a lien in the ADR Program shall file that claim with the City by sending the demand and supporting documentation to the assigned claims adjuster for the City. The City may request and the Eligible Lien Claimant shall provide any additional supporting documentation requested by the City, including but not limited to documentation regarding billing and payment.
- 9.4 If the assigned adjuster or the adjuster's representative is unable to resolve the lien claim with the Eligible Lien Claimant, either party may request the Ombudsperson to set the matter for mediation. If the dispute remains unresolved after mediation, the Ombudsperson shall refer the matter to arbitration. The parties may conduct discovery before arbitration. The arbitrator shall not conduct the hearing until both parties provide written notice they are ready to proceed.

**Article 10: ADR Program Evaluation**

- 10.1 The City Controller will evaluate and report on the ADR Program estimated costs and savings at the conclusion of each full fiscal year. If Local 798 disagrees with the Controller's evaluation and report, Local 798 may request that a mutually-agreed upon external actuary evaluate and report on the ADR Program costs and savings. All costs and expenses of the external actuary shall be paid from the ADR Program net savings, if any. All costs and expenses of the external actuary that exceed the ADR Program net savings shall be borne by Local 798. The Controller shall review and consider the report of the external actuary, and then issue a final report.
- 10.2 Within 60 days of the Joint Committee's acceptance of the Controller's report under section 10.1, the City will allocate an amount equal to fifty percent (50%) of the ADR Program estimated net savings, as stated in the Controller's report, for the benefit of active employees covered by the Agreement. The Joint Committee shall determine the specific purposes for the expenditure of these funds. The Joint Committee shall attempt to reach consensus in its determination; however, in the event the Joint Committee cannot reach consensus, it shall submit any unresolved disputes regarding the expenditures to mediation before a mediator from the list established under section 3.1.5.7

**Article 11: General Provisions**

- 11.1 This Agreement is made and entered into within and shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of California, without regard to the principles of conflicts of laws. The parties agree that the San Francisco Superior court will have jurisdiction to enforce this Agreement, and that the parties will submit all disputes arising under this Agreement to the San Francisco Superior Court.
- 11.2 All Article and paragraph captions are for reference only and shall not be considered in construing this Agreement.
- 11.3 This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that any ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

[Signatures on following page]

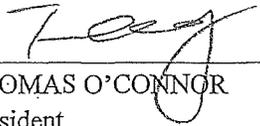
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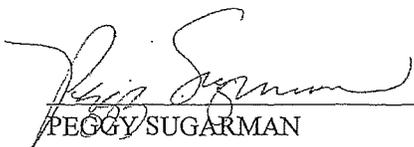
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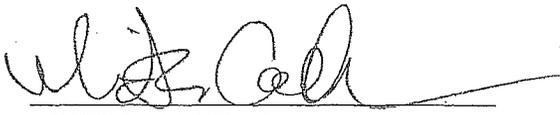
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

FOR LOCAL 798

FOR THE CITY AND COUNTY

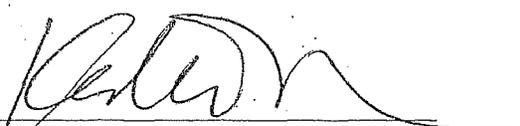
  
\_\_\_\_\_  
THOMAS O'CONNOR  
President

  
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PEGGY SUGARMAN  
Workers Compensation Director

  
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MICKI CALLAHAN  
Human Resources Director

  
\_\_\_\_\_  
CAROL ISEN  
Director of Employee Relations

APPROVED AS TO FORM:  
DENNIS J. HERRERA  
City Attorney

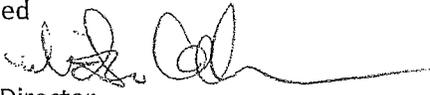
  
\_\_\_\_\_  
KATHARINE HOBIN PORTER  
Chief Labor Attorney  
Counsel for the City

City and County of San Francisco  
Micki Callahan  
Human Resources Director



Department of Human Resources  
*Connecting People with Purpose*  
www.sfdhr.org

**MEMORANDUM**

**DATE:** January 11, 2019  
**TO:** Mayor London Breed  
**FROM:** Micki Callahan   
Human Resources Director  
**SUBJECT:** Workers' Compensation "Carve Out" agreements for Police and Fire

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The California Labor Code authorizes employers and unions to agree to an Alternative Dispute Resolution (ADR) program, also known as a "Carve Out," to resolve workers' compensation disputes that would otherwise be resolved through court proceedings overseen by the State Division of Workers' Compensation.

After three months of negotiations, on December 17, 2018, the SF POA and SF Fire Fighters Local 798 each agreed to the terms of an ADR program to resolve workers' compensation claims by current and former (including retired) employees represented by the two unions.

The program streamlines and expedites the fair resolution of workers' compensation claims that would otherwise be subject to onerous and lengthy processes mandated by state regulations.

The key goals of the program are to provide for:

- Timely determinations on covered employees' workers' compensation claims;
- Timely access to high-quality medical care for industrially ill or injured employees;
- Reduced litigation;
- Faster return to work for injured and ill employees; and
- Reduced workers' compensation costs.

Similar ADR programs in other agencies have resulted in significant cost savings, improved employee morale, and reduced lost time due to work-related injury and illness.

The Controller will evaluate the ADR program's estimated costs and savings at the conclusion of each full fiscal year. The City has agreed to allocate 50% of the ADR program estimated net savings, as stated in the Controller's report, for the benefit of active employees represented by each union.

The agreements will be submitted for Board of Supervisors approval on Tuesday, January 15, 2019. If approved, the programs will be implemented July 1, 2019 and will continue for an initial term of three years, subject to annual renewal thereafter by mutual agreement.

OFFICE OF THE MAYOR  
SAN FRANCISCO



LONDON N. BREED  
MAYOR

2019 JAN 15 PM 4:47

TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: Kanishka Karunaratne Cheng *KKC*  
RE: Labor-Management Agreement - San Francisco Firefighters' Association,  
Local 798 - Workers' Compensation Alternative Dispute Resolution  
Program  
DATE: 1/15/2019

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**Resolution authorizing the Department of Human Resources to enter a Workers' Compensation Alternative Dispute Resolution Labor-Management Agreement with the San Francisco Firefighters' Association, Local 798, with an initial term of three years to commence following approval by the Board of Supervisors, and continuing year to year thereafter in one year terms.**

Should you have any questions, please contact Kanishka Karunaratne Cheng at 415-554-6696.

1 DR. CARLTON B. GOODLETT PLACE, ROOM 200  
SAN FRANCISCO, CALIFORNIA 94102-4681  
TELEPHONE: (415) 554-6141